IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 17423 of 2006
Date of decision : 3-11-2006

Jagdev Singh … Petitioner

Versus

Presiding Officer, Labour Court, UT,
Chandigarh & others. … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. S.K.Biriwal, Advocate,
for the petitioner

…

ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 16.2.2001 Annexure P-9, vide which the learned Labour Court, U.T. Chandigarh, has dismissed his claim statement.

Petitioner-workman was appointed as Helper on 19.7.1982 by the respondent-corporation. On 7.5.1990, he was granted five days' earned leave, i.e. from 7.5.1990 to 11.5.1990. During the period of his earned leave, he was transferred from Head Office, Chandigarh, to District Sangrur. However, instead of joining the new place of posting, he applied for extension of leave on the ground of illness of his wife and his parents. On 31.5.1990, a charge-sheet was served upon the workman on the ground that he remained absent from duty without the sanction of competent Authority and also failed to join at Sangrur. The workman submitted his reply to the charge-sheet which was declined. A regular enquiry was then ordered and an Inquiry Officer was appointed. The Inquiry Officer held the

enquiry and gave the report against the workman whereafter vide order dated 11.2.1992, he was removed from service. The workman filed an appeal against the said order which was dismissed by respondent No.3. Feeling aggrieved with his termination, the workman served a demand notice upon the corporation seeking reinstatement with continuity of service and back-wages. On failure of the reconciliation proceedings, the matter was referred to the Labour Court for adjudication. The workman filed his claim statement before the Labour Court taking the plea that he was on earned leave from 4.5.1990 to 13.5.1990 which was duly sanctioned. He took further leave due to illness of his wife and his parents. He pleaded that he could not be transferred outside Chandigarh during the period when he was on leave and that the transfer orders were never served upon him. He further pleaded that he was not allowed to lead evidence in defence and that the report of the Inquiry Officer is based on no evidence. Upon notice of the claim statement, the corporation denied the allegations levelled by the workman. It was stated that after his request for further leave was declined, he was asked in writing to join the new place of posting but he refused to receive such letter. He even refused to receive the transfer order. Thereafter, evidence was led by the parties. Upon appreciation thereof, the learned Labour Court passed the impugned award in the manner indicated above. Hence, the present writ petition by the workman.

We have heard the learned the learned counsel for the petitioner-workman and have also gone through the paper-book carefully.

Learned counsel for the petitioner has argued that the absence of the petitioner after 11.5.1990 due to illness of his wife as well as parents was neither intentional nor willful but due to the circumstances beyond his control, as such, he could not join his duties on 12.5.1990 after availing the sanctioned leave from 7.5.1990 to 11.5.1990. The petitioner regularly applied for extensions of his leave on 1.6.1990, 1.7.1990 and 1.8.1990. The petitioner was never informed about the rejection of his any request made by him for extension of his leave. He has further argued that the transfer of the petitioner on 8.5.1990, who was working on Class-IV post was made dehors to the rules when the petitioner admittedly was on earned leave. The said transfer order was never communicated to the petitioner.

We have considered the submissions of learned counsel for the petitioner and find no substance therein. A bare perusal of the impugned award shows that the petitioner was sanctioned earned leave w.e.f 7.5.1990 to 11.5.1990. In the meantime, he was transferred from Head Office, Chandigarh to Sangrur vide order dated 8.5.1990. He was required to join back his duties on 12.5.1990 after availing the earned leave. But instead of it, he sent a telegram for extension of his leave up to 31.5.1990 on account of his illness. It may be mentioned that the petitioner before the enquiry officer volte face stated that he sent the telegram for extension of leave on account of illness of his wife. His that very request was declined by the respondent-department and a letter under registered cover was sent to the petitioner on 18.5.1990 intimating him about the rejection of his request and requiring him to join his duties at his new place of posting, pursuant to his transfer from Chandigarh to Sangrur made vide order dated 8.5.1990. A perusal of the award also shows that that registered letter was not accepted by the petitioner and it was received back undelivered. Ultimately, the petitioner was charge-sheeted vide charge-sheet dated 31.5.1990, which admittedly, was received by the petitioner on 12.7.1990 and to which the petitioner filed reply. But despite that, the petitioner did not bother to join his duties. Thereafter, the department got published a notice in the newspaper "Punjabi Tribune"dated 2.7.1990 to the effect that the petitioner is running absence from duties since 12.5.1990. But that notice did not make any changes in the circumstances and the transfer order dated 8.5.1990 was not complied with by the petitioner. A bare perusal of the award shows that no medical certificate in respect of illness either of his wife or his parents were produced by the petitioner, rather mere prescription slips were produced by the petitioner which cannot be rated "sufficient" in respect of his said plea. If for the sake of arguments, it is presumed that the petitioner was not aware of his transfer and rejection of his request for extension of leave, then also no explanation is forthcoming as to why the petitioner did not join his duties at new place of posting when charge-sheet dated 31.5.1990 containing the allegations of running absent from 12.5.1990 and non-joining at new place of posting at Sangrur, was served upon him on 12.7.1990. A perusal of the impugned award shows that the petitioner was never suspended during the enquiry proceedings. Therefore,

he had to act promptly on the directions issued by the higher authorities. Rather, the sequence of events suggest that the petitioner deliberately did not join his duties just to avoid his joining at his new place of transfer. If the petitioner had any grievance with regard to his said transfer, he can very well approach the higher authorities for redressal thereof. But instead of doing so, the petitioner opted the way of running absent from duties on one pretext or the other only just to avoid his transfer. The transfer is an exigency of service. It is only the appropriate authority to decide who should be transferred and where. The power of transfer falls exclusively within the domain of the appropriate authority. Therefore, every employee has to honour the transfer order passed by the appropriate authority. Learned counsel for the petitioner has failed to referr to any rules or instructions debarring transfer of Class-IV employees from Head Office to Branch Office, situated at any other station. A perusal of the impugned award shows that the petitioner was given opportunity to cross examine the department's witness but he had not cross-examined the department witness. Further, the petitioner made a categoric statement that the reply to the charge sheet and the medical certificates be read as his defence. In this eventuality, it cannot be said that the principles of natural justice were not complied with during the course of enquiry proceedings. Considering all these facts, the Labour Court has rightly concluded that a fair and proper enquiry was conducted, on the basis of whose report the services of the petitioner were terminated on account of his remaining willfully absent from 12.5.1990 and non-compliance of transfer order dated 8.5.1990.

While exercising the writ jurisdiction under Article 226/227 of the Constitution of India, this Court would not sit as a Court of appeal over the findings of fact recorded by the Labour Court. Even otherwise, this Court is satisfied that on the basis of evidence on record, the Labour Court has arrived at certain findings of fact, which are neither perverse nor based on no evidence. In these circumstances, it would not be possible to interfere with the award given by the Labour Court.

Apart from this, the instant petition also suffers from delay and latches. The claim of the petitioner was dismissed by the Labour Court vide award dated 16.2.2001 whereas he has filed the instant petition after a considerable lapse of more than five and a half years that too without any

explanation. Therefore, considering the law laid down by the Supreme Court in the case of **Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271,** the instant petition has to be rejected on the ground of delay and latches as well.

For the discussion made above, we find no infirmity in the concurrent findings of fact recorded by the Labour Court. The petition is wholly without merit and the same is accordingly dismissed in limine.

(ARVIND KUMAR)
JUDGE

November 3,2006 **(J.S. NARANG)**
Jiten **JUDGE**